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## BEFORE THE ARIZONA CORPORATION COMMISSION

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CDCOMMISSIONERS

Arizona Corporation Commission

**DOCKETED**

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

DEC -8 2009

DOCKETED BY

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In the matter of:

DOCKET NO. S-20656A-09-0074

DAVID W. COLE and SIIRI COLE, husband  
and wifeDECISION NO. 71427HIGHLINE ESTATES, LLC, an Arizona  
limited liability companyMUTUAL FINANCIAL SERVICES, LLC  
(d/b/a MFS Real Estate Division and MFS  
Investments), an Arizona limited liability  
company**ORDER TO CEASE AND DESIST, ORDER  
FOR RESTITUTION, ORDER FOR  
ADMINISTRATIVE PENALTIES AND  
CONSENT TO SAME**DREAM CRAFT, LLC, an Arizona limited  
liability company**BY: RANDY K. WARD and SHARON WARD**SCOT A. OGLESBY (d/b/a Arizona Asset  
Management) and LORI ANN OGLESBY,  
husband and wifeRANDY K. WARD (CRD# 4137944) (d/b/a  
Arizona Asset Management) and SHARON  
WARD, husband and wife

Respondents.

Respondents RANDY K. WARD ("WARD") and SHARON WARD ("Respondent Spouse"), elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease and Desist, Order of Restitution, and Order for Administrative Penalties ("Order"). Respondent WARD and Respondent Spouse admit the jurisdiction of the Arizona Corporation Commission ("Commission"); admit only for the purposes of this proceeding and any other administrative proceeding before the Commission the Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the Commission.

## I.

## FINDINGS OF FACT

1. David W. Cole ("Cole") is an individual who at all relevant times resides in Arizona.

2. Highline Estates, LLC ("Highline") is an Arizona limited liability company organized on or about May 9, 2005. According to Commission records, Cole was Highline's sole manager from May 9, 2005 until July 2, 2006. Mutual Financial Services, LLC (d/b/a MFS Real Estate and MFS Investments) ("Mfs") became Highline's sole manager from July 3, 2006 until the present.

3. Mfs is an Arizona limited liability company organized on or about January 18, 2000. According to Commission records, Mfs is solely managed by Dream Craft Homes, LLC ("Dream Craft").

4. Scot A. Oglesby (d/b/a Arizona Asset Management) ("Oglesby") is an individual who at all relevant times resides in Arizona.

5. RANDY K. WARD (CRD# 4137944) (d/b/a Arizona Asset Management) ("WARD") is an individual who at all relevant times resides in Arizona. WARD has not been a registered salesman since December 2005.

6. WARD and SHARON WARD were married on February 14, 2007. WARD and SHARON WARD were married at all relevant times thereafter. SHARON WARD is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community. WARD and SHARON WARD were acting for their own benefit, and for the benefit or in furtherance of the marital community.

7. WARD may be referred to as "Respondent."

8. SHARON WARD may be referred to as "Respondent Spouse."

9. Beginning in or around June 2006 until in or around February 2008, Highline, Oglesby, and WARD offered and sold in Arizona at least \$688,761.53 in securities in the form of notes (hereinafter "Investments") to at least 18 investors, the majority of which reside in Arizona.

10. The investors in Highline were elderly and unsophisticated.

1           11.     Beginning in or around 2004, Cole formed a relationship with Oglesby as both Cole  
2 and Oglesby had offices in the same building. At the time Oglesby was a salesperson with a  
3 company called Easy Street Financial Group, Inc. ("Easy Street"). Oglesby told Cole he could  
4 raise money for Cole's real estate projects.

5           12.     Beginning in or around 2006, Cole sought to raise capital in order to fund Highline.  
6 Highline was to build single family housing units on four undeveloped parcels of land, subdivided  
7 into 65 lots, in Phoenix (hereinafter "Highline Project").

8           13.     Cole was in charge of the Highline Project, but Cole had little experience in buying  
9 parcels, building the infrastructure and then selling the homes.

10          14.     Beginning in or around 2006, Cole approached Oglesby to sell the Investments as a  
11 product to investors. The Investments were in the form of loan agreements in which investors  
12 would provide funds that would be pooled together to fund the construction of the infrastructure  
13 and the houses.

14          15.     Cole met with Oglesby and WARD, who worked with Oglesby at Arizona Asset  
15 Management, to discuss raising funds for the Highline Project. After at least a few meetings with  
16 Cole, Oglesby and WARD agreed to locate investors to raise money by offering and selling the  
17 Investments.

18          16.     In May and June 2006, WARD signed an employment application with Mfs. Mfs,  
19 through Cole, signed an employment agreement with WARD. WARD was compensated by Mfs  
20 for selling the Investments. According to Cole, WARD was paid a six percent commission on the  
21 amount raised.

22          17.     Cole, on behalf of Highline and Mfs, hired WARD without conducting a  
23 background check or asking about any prior securities violations. WARD, Easy Street and others  
24 were subject to a California Department of Corporations Desist and Refrain Order on April 3, 2003  
25 regarding California securities violations. WARD did not disclose this order to the investors.

26          18.     Cole developed and provided the Highline Investment documents to WARD. The  
Investment documents named Highline as the borrower. The investors were promised their funds

1 would be invested for a 24-month term at 9.5% interest per year with interest paid monthly. The  
2 Investments listed as security a corporate guarantee and deed of trust. The Investment included  
3 terms that the deed of trust would be filed no later than six months from the date of the agreement.  
4 It also stated that the investor's deed would be subordinate to any other deed of trust as Highline so  
5 designates without obtaining permission from the investor.

6 19. The Investment documents listed WARD as the Mfs Representative.

7 20. WARD delivered the investor checks made payable to Highline to Cole.

8 21. WARD did not discuss with Cole his background or the Highline Project. WARD  
9 did not inquire about Cole's real estate development background, how long Highline had been in  
10 business, whether or not Highline had a business plan, whether Highline had the building permits,  
11 offering memoranda, and the timeframe for completing the project. Therefore, this information  
12 was not provided to the investors.

13 22. WARD offered and sold the Investments to investors who sought to reinvest their  
14 matured certificates of deposit ("CD") or annuities. Typically, when the investors would call, visit,  
15 or be visited by WARD to reinvest their CDs or annuities, WARD would offer and sell the  
16 Highline Investment.

17 23. WARD told investors that the Highline investment paid 9.5% interest each year for  
18 a two-year period, which was higher than the rates the investors would get in a CD or an annuity.  
19 WARD gave the investors a document which said Highline would pay investors a monthly interest  
20 payment.

21 24. WARD did not ask the investors about their financial condition and their ability to  
22 withstand the loss.

23 25. WARD failed to disclose to investors whether their deeds of trust would be as first  
24 deeds of trust or be filed after another deed of trust. WARD failed to disclose that the property was  
25 already encumbered by a mortgage.

26 26. WARD failed to provide any detail regarding financial information of the  
development to the investors. At least one investor received a "current projected land value" of the

1 Highline project. The projected land equity, after development and land acquisition costs, was  
2 \$3,150,000. The investors did not receive any financial information on Highline.

3 27. After investing, some of the investors received a letter from Cole, as President of  
4 Mfs, on Mfs letterhead welcoming them to the private lending program, which was the Highline  
5 Investment. Cole enclosed a lenders' certificate showing Highline as the borrower of funds and a  
6 loan agreement noting Highline as the borrower. Cole signed as the Highline representative. In at  
7 least one instance, one lenders' certificate indicated that Mfs was offering the Investment. In at  
8 least another instance, the lenders' certificate indicated Mfs was brokering the Investment.

9 28. WARD told investors that there was no risk to the Investment because it was  
10 secured by real estate. Although WARD represented that there was no risk, WARD failed to  
11 disclose to investors the existence of a mortgage secured by a first deed of trust.

12 29. WARD represented that the investors would receive monthly interest payments,  
13 Highline did not pay all investors a monthly interest payment. At least one investor was never paid  
14 a monthly interest payment. Another investor had to contact Cole to receive the monthly interest  
15 payment, but did not receive the first monthly payment until about a year after investing. In yet  
16 another instance, an investor received several monthly interest payments, but then the payments  
17 stopped.

18 30. The majority of funds raised from the sale of the Investments were transferred from  
19 Highline to other entities controlled by or through Cole to develop the land. This was not disclosed  
20 to the investors.

21 31. At all times relevant, WARD was not registered with the Commission as a dealer or  
22 salesman.

23 32. At all times relevant, the Investments were not registered with the Commission.

24 33. Highline, Oglesby and WARD raised \$688,761.53 from 18 investors, 15 of which  
25 are Arizona residents, returned \$37,191.17, for a total of \$651,570.36 that is owed to investors.

26 34. WARD earned \$20,836.88 in commissions for raising investor funds.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. WARD offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. WARD violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

4. WARD violated A.R.S. § 44-1842 by offering or selling securities while neither registered as a dealer or salesman nor exempt from registration.

5. WARD violated A.R.S. § 44-1991 by (a) employing a device, scheme, or artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c) engaging in transactions, practices, or courses of business that operate or would operate as a fraud or deceit.

Respondent's conduct included:

a) WARD failed to disclose to at least one investor the California Department of Corporations Desist and Refrain Order against WARD for violations of California's securities laws; and

b) WARD misrepresented to at least one investor that the Investment had no risk even though the property was already encumbered by a mortgage secured by a first deed of trust;

6. Respondent's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

7. Respondent's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

8. Respondent's conduct is grounds for administrative penalties under A.R.S. § 44-2036.

9. From February 14, 2007 to the present, Respondent WARD acted for the benefit of his marital community and, pursuant to A.R.S. §§ 25-214 and 25-215, this Order of restitution and administrative penalties is a debt of the community.

### III.

## ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondent's consent to the entry of this Order, attached and incorporated by reference, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondent, and any of Respondent's agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED that Respondent and Respondent Spouse comply with the attached Consent to Entry of Order.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondent shall, individually, pay restitution to the Commission in the amount of \$20,836.88. Of this amount, \$7,731.76 shall, jointly and severally with Respondent, be paid by the marital community of WARD and Respondent Spouse. Payment shall be made in full on the date of this Order. Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid in full. Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account controlled by the Commission.

The Commission shall disburse the funds on a pro-rata basis to investors shown on the records of the Commission. Any restitution funds that the Commission cannot disburse because an investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an investor because the investor is deceased and the Commission cannot reasonably identify and locate the deceased investor's spouse or natural children surviving at the time of the distribution, shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the

1 Commission. Any funds that the Commission determines it is unable to or cannot feasibly  
2 disburse shall be transferred to the general fund of the state of Arizona.

3 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondent and the  
4 marital community of WARD and Respondent Spouse, shall jointly and severally, pay an  
5 administrative penalty in the amount of \$25,000.00. Payment shall be made to the "State of  
6 Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum from the  
7 date of this Order until paid in full. The payment obligations for these administrative penalties  
8 shall be subordinate to any restitution obligations ordered herein and shall become immediately  
9 due and payable only after restitution payments have been paid in full or upon Respondents'  
10 default with respect to Respondents' restitution obligations.

11 For purposes of this Order, a bankruptcy filing by Respondent or Respondent Spouse shall  
12 be an act of default. If Respondent or Respondent Spouse does not comply with this Order, any  
13 outstanding balance may be deemed in default and shall be immediately due and payable.

14 IT IS FURTHER ORDERED, that if Respondent or Respondent Spouse fails to comply  
15 with this order, the Commission may bring further legal proceedings against that Respondent,  
16 including application to the superior court for an order of contempt.

17 IT IS FURTHER ORDERED, that no finding of fact or conclusion of law contained in this  
18 Order shall be deemed binding against any Respondent under this Docket Number who has not  
19 consented to the entry of this Order.

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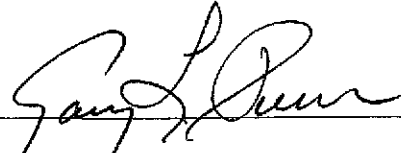


IT IS FURTHER ORDERED that this Order shall become effective immediately.

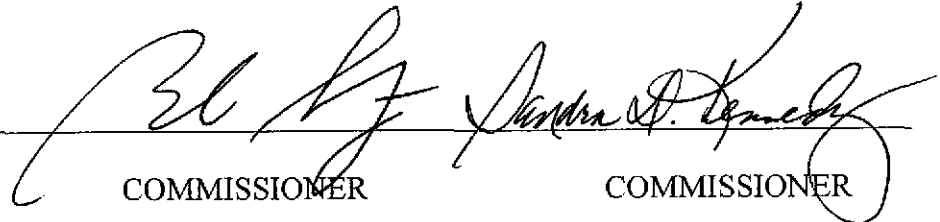
BY ORDER OF THE ARIZONA CORPORATION COMMISSION



CHAIRMAN



COMMISSIONER

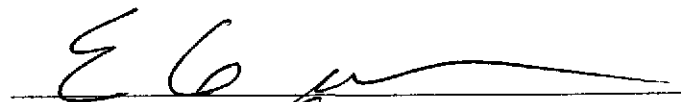


COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,  
Executive Director of the Arizona Corporation  
Commission, have hereunto set my hand and caused the  
official seal of the Commission to be affixed at the  
Capitol, in the City of Phoenix, this 8<sup>th</sup> day of  
December, 2009.



ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator,  
voice phone number 602-542-3931, e-mail [sbernal@azcc.gov](mailto:sbernal@azcc.gov).

(AV)

**CONSENT TO ENTRY OF ORDER**

1  
2           1.       Respondents RANDY K. WARD ("Respondent") and SHARON WARD  
3 ("Respondent Spouse") admit the jurisdiction of the Commission over the subject matter of this  
4 proceeding. Respondent and Respondent Spouse acknowledge that Respondent and Respondent  
5 Spouse have been fully advised of their right to a hearing to present evidence and call witnesses  
6 and they knowingly and voluntarily waive any and all rights to a hearing before the Commission  
7 and all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the  
8 Arizona Administrative Code. Respondent and Respondent Spouse acknowledge that this Order to  
9 Cease and Desist, Order of Restitution and Order for Administrative Penalties ("Order")  
10 constitutes a valid final order of the Commission.

11           2.       Respondent and Respondent Spouse knowingly and voluntarily waive any right  
12 under Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or  
13 extraordinary relief resulting from the entry of this Order.

14           3.       Respondent and Respondent Spouse acknowledge and agree that this Order is  
15 entered into freely and voluntarily and that no promise was made or coercion used to induce such  
16 entry.

17           4.       Respondent and Respondent Spouse understand and acknowledge that Respondent  
18 and Respondent Spouse have a right to seek counsel regarding this Order, and that Respondent and  
19 Respondent Spouse have had the opportunity to seek counsel prior to signing this Order.  
20 Respondent and Respondent Spouse acknowledge and agree that, despite the foregoing, they freely  
21 and voluntarily waive any and all right to consult or obtain counsel prior to signing this Order.

22           5.       Respondent and Respondent Spouse admit only for the purposes of this proceeding  
23 and any other administrative proceeding before the Commission the Findings of Fact and  
24 Conclusions of Law contained in this Order; and consent to the entry of this Order by the  
25 Commission the Findings of Fact and Conclusions of Law contained in this Order. Respondent  
26 and Respondent Spouse agree that they shall not contest the validity of the Findings of Fact and

1 Conclusions of Law contained in this Order in any present or future administrative proceeding  
2 before the Commission.

3 6. By consenting to the entry of this Order, Respondent and Respondent Spouse agree  
4 not to take any action or to make, or permit to be made, any public statement denying, directly or  
5 indirectly, any Finding of Fact or Conclusion of Law in this Order or creating the impression that  
6 this Order is without factual basis. Respondent and Respondent Spouse will undertake steps  
7 necessary to assure that all of their agents and employees understand and comply with this  
8 agreement.

9 7. While this Order settles this administrative matter between Respondent, Respondent  
10 Spouse, and the Commission, Respondent and Respondent Spouse understand that this Order does  
11 not preclude the Commission from instituting other administrative or civil proceedings based on  
12 violations that are not addressed by this Order.

13 8. Respondent and Respondent Spouse understand that this Order does not preclude  
14 the Commission from referring this matter to any governmental agency for administrative, civil, or  
15 criminal proceedings that may be related to the matters addressed by this Order.

16 9. Respondent and Respondent Spouse understand that this Order does not preclude  
17 any other agency or officer of the state of Arizona or its subdivisions from instituting  
18 administrative, civil, or criminal proceedings that may be related to matters addressed by this  
19 Order.

20 10. Respondent agrees that Respondent will not apply to the state of Arizona for  
21 registration as a securities dealer or salesman or for licensure as an investment adviser or  
22 investment adviser representative until such time as all restitution and penalties under this Order  
23 are paid in full.

24 11. Respondent agrees that Respondent will not exercise any control over any entity  
25 that offers or sells securities or provides investment advisory services within or from Arizona until  
26 such time as all restitution and penalties under this Order are paid in full.

1           12.     Respondent agrees that Respondent will not sell any securities in or from Arizona  
2 without being properly registered in Arizona as a dealer or salesman, or exempt from such  
3 registration; Respondent will not sell any securities in or from Arizona unless the securities are  
4 registered in Arizona or exempt from registration; and Respondent will not transact business in  
5 Arizona as an investment adviser or an investment adviser representative unless properly licensed  
6 in Arizona or exempt from licensure.

7           13.     Respondent and Respondent Spouse agree that they will continue to cooperate with  
8 the Securities Division including, but not limited to, providing complete and accurate testimony at  
9 any hearing in this matter and cooperating with the state of Arizona in any related investigation or  
10 any other matters arising from the activities described in this Order. This provision shall not  
11 constitute a waiver of Respondent's state and federal rights against self-incrimination.

12           14.     Respondent and Respondent Spouse acknowledge that any restitution or penalties  
13 imposed by this Order are obligations of Respondent, as well as the marital community.

14           15.     Respondent and Respondent Spouse consent to the entry of this Order and agree to  
15 be fully bound by its terms and conditions.

16           16.     Respondent and Respondent Spouse acknowledge and understand that if  
17 Respondent or Respondent Spouse fail to comply with the provisions of the order and this consent,  
18 the Commission may bring further legal proceedings against them, including application to the  
19 superior court for an order of contempt.

20           17.     Respondent and Respondent Spouse understand that default shall render  
21 Respondents and the marital community of Respondent Spouse liable to the Commission for its  
22 costs of collection and interest at the maximum legal rate.

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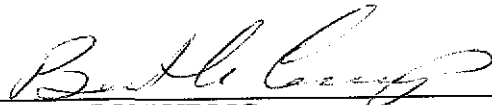
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18. Respondent and Respondent Spouse agree and understand that if Respondent or Respondent Spouse fail to make any payment as required in the Order, any outstanding balance shall be in default and shall be immediately due and payable without notice or demand. Respondent and Respondent Spouse agree and understand that acceptance of any partial or late payment by the Commission is not a waiver of default by Commission.

  
RANDY K. WARD

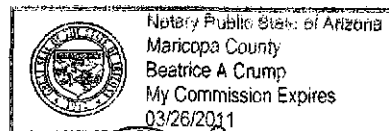
STATE OF ARIZONA )  
County of *Maricopa* ) ss

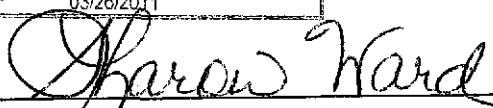
SUBSCRIBED AND SWORN TO BEFORE me this 12 day of November, 2009.

  
NOTARY PUBLIC

My commission expires:

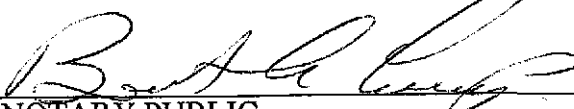
3/26/2011



  
SHARON WARD

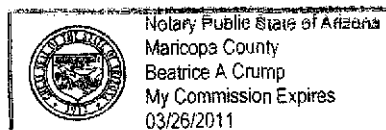
STATE OF ARIZONA )  
County of *Maricopa* ) ss

SUBSCRIBED AND SWORN TO BEFORE me this 12 day of November, 2009.

  
NOTARY PUBLIC

My commission expires:

3/26/2011



SERVICE LIST FOR:

ORDER TO CEASE AND DESIST, ORDER  
FOR RESTITUTION, ORDER FOR  
ADMINISTRATIVE PENALTIES AND  
CONSENT TO SAME BY: RANDY K. WARD  
AND SHARON WARD

DOCKET NO.:

S-20656A-09-0074

Scot Oglesby  
515 East Carefree Highway, No. 824  
Phoenix, AZ 85085  
Respondent

Randy Ward  
3153 W Whitman Dr.  
Anthem, AZ 85086  
Respondent